

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALFRED FELICIANO,

Plaintiff,

v.

Civil Action No. 04-12461-GAO

GLOBALWARE SOLUTIONS, INC. and
GARY LORTIE,

Defendants.

and

GLOBALWARE SOLUTIONS, INC.,
and GARY LORTIE,

Third-Party Plaintiffs,

v.

JAMES R. BARTLETT,

Third-Party Defendant.

MOTION TO DISMISS THIRD PARTY CLAIMS

Pursuant to this Court's Order of July 9, 2007, Defendants/Third-Party Plaintiffs

GlobalWare Solutions, Inc. ("GWS") and Gary Lortie ("Lortie") hereby move pursuant to 28 U.S.C. §1367(c)(3) and Fed. R. Civ. P. 41(a)(2), to dismiss their third-party claims against Third-Party Defendant James R. Bartlett ("Bartlett") without prejudice. As grounds for this Motion, GWS and Lortie state as follows:

1. GWS, Lortie and Plaintiff, Alfred Feliciano, have resolved by settlement all disputes among them, including Feliciano's COBRA claim -- the only basis for federal question

jurisdiction in this case. Plaintiff and Defendants have filed with this Court a Stipulation of Dismissal asking the Court to dismiss with prejudice Plaintiff and Defendants claims and counterclaims against each other (the “Plaintiff and Defendants’ Stipulation of Dismissal”).

2. The only remaining parties are GWS, Lortie, and Bartlett. These parties are citizens of Massachusetts.

3. Following entry of the Plaintiff and Defendants’ Stipulation of Dismissal, the only parties remaining in this action will be GWS, Lortie and Bartlett, and the only claims remaining will be GWS and Lortie’s third-party claims against Bartlett, which are based on state law. Specifically, GWS and/or Lortie allege as claims against Bartlett: breach of the duty of loyalty; breach of fiduciary duty; indemnification; and contribution.

4. As a result, all claims over which the Court had original jurisdiction have been dismissed. Pursuant to 28 U.S.C. 1367 §(c) (3) and this Court’s July 9, 2007 order, the Court should therefore decline to exercise supplemental jurisdiction over GWS and Lortie’s third-party claims against Bartlett and dismiss those claims without prejudice.

WHEREFORE, for the reasons stated herein, GWS and Lortie respectfully request that the Court grant this Motion and dismiss GWS and Lortie’s third-party claims against Bartlett without prejudice.

LOCAL RULE 7.1(a)(2) CERTIFICATION

Counsel for GWS and Lortie hereby certify, pursuant to Local Rule 7.1(a)(2), that they have conferred in good faith with counsel for Feliciano and Bartlett to resolve or narrow the issues presented herein.

Respectfully submitted,

GLOBALWARE SOLUTIONS, INC. and
GARY LORTIE

By their attorneys,

/s/ Mark H. Burak

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Dated: July 17, 2007

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on July 17, 2007.

/s/ Mark H. Burak

Mark H. Burak